



May 31, 2017

**Via FOIA Online**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Freedom of Information Act Request for Records Related to Deputy  
Assistant Administrator Nancy Beck's Role in TSCA Framework  
Rulemakings**

Dear FOIA Officer:

Earthjustice and Safer Chemicals, Healthy Families ("SCHF") submit this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency ("EPA") regulations at 40 C.F.R. §§ 2.100-2.406.

**I. Description of Records Sought**

In accordance with FOIA, please provide us with all of the following records that are in EPA's possession, custody, or control:

1. For the time period April 17, 2017 to present, all records related to Deputy Assistant Administrator Nancy Beck's participation, as an EPA or federal government official, in the development of either of the following two rules:
  - a. Procedures for Prioritization of Chemicals for Risk Evaluation under the Toxic Substances Control Act ("TSCA"), EPA-HQ-OPPT-2016-0636, or
  - b. Procedures for Chemical Risk Evaluation under the Amended Toxic Substances Control Act, EPA-HQ-OPPT-2016-0654-0001.

(Together these rules are referred to herein as the "TSCA Framework Rules.");

2. For the time period from June 22, 2016 to the present, all records related to Nancy Beck's participation, in her personal capacity or as a representative of the American Chemistry Council or any entity other than EPA, in the development of the TSCA Framework Rules;

3. Any records indicating whether Deputy Assistant Administrator Nancy Beck recused herself or sought a waiver from any agency ethics official to participate in the TSCA Framework Rules as an EPA or federal government official, and any records indicating whether the waiver was granted;
4. Any records indicating the steps, if any, taken by any employee of the U.S. Government to request or recommend the recusal of Deputy Assistant Administrator Nancy Beck from involvement in the TSCA Framework Rules;
5. Any ethics agreement entered into by Deputy Assistant Administrator Nancy Beck in connection with her current employment by EPA;
6. Any records concerning Deputy Assistant Administrator Nancy Beck's TSCA Confidential Business Information (CBI) clearance;
7. Any emails, calendar entries, correspondence, and government records about Deputy Assistant Administrator Nancy Beck's meetings or planned meetings from January 20, 2017 to January 1, 2018, with the American Chemistry Council or with industries or companies who are or who have been represented by the American Chemistry Council in the past 5 years; and
8. Any records concerning Deputy Assistant Administrator Nancy Beck's annual Conflict of Interest declarations.

In this request, the term "records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, social media posts, text messages, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters.

This request specifically seeks responsive records in or on the personal computers, cellphones or other devices, or personal email accounts used by EPA staff if used for any government purpose.

If any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;
- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
- (5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

## **II. Request for a Fee Waiver**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), we request a fee waiver because “disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.*

### **A. Earthjustice and SCHF Satisfy the First Fee Waiver Requirement**

As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

#### **1. Subject of the request**

The records requested here relate to whether EPA Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP) Nancy Beck is participating in ongoing rulemaking and other policy-making activities in which both the American Chemistry Council (ACC), Dr. Beck’s former employer, and its member companies have an interest. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

#### **2. Informative value of the information to be disclosed**

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess any information regarding Deputy Assistant Administrator Beck’s participation in, or recusal from, the development of the TSCA Framework Rules in which Dr. Beck’s former employer and its member companies have an interest. The public does not know whether, in

accordance with Dr. Beck's ethics agreement and relevant ethics rules, she has been recused from such rulemakings or has been granted a waiver to participate.

There is more than a reasonable likelihood that these records have informative value to the public. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006). The effect of TSCA and its implementation, including matters such as Deputy Assistant Administrator Beck's prior work on behalf of the chemical manufacturing industry, has routinely garnered attention from trade and national press. See, e.g., Coral Davenport and Emmarie Hutteman, "Lawmakers Reach Deal to Expand Regulation of Toxic Chemicals," *New York Times* (May 19, 2016); Trip Gabriel, Michael Wines, Coral Davenport, "Chemical Spill Muddies Picture in a State Wary of Regulations," *New York Times* (January 18, 2014); Tom Philpott, "Trump Just Appointed a Chemical Industry Honcho to Protect Us From Chemicals," *Mother Jones*, (Apr. 14, 2017); Letter from Senator Tom Udall, et.al. to Vice-President Elect Mike Pence (Mar. 20, 2017), available at <https://www.tomudall.senate.gov/news/press-releases/bipartisan-group-of-senators-urge-smooth-transition-for-chemical-safety-reform-implementation-in-new-administration>.

Disclosure of the requested records would meaningfully inform public understanding with respect to a topic of public interest. The records requested are not currently in the public domain.

**3. Contribution to an understanding of the subject by the public is likely to result from disclosure.**

There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

Earthjustice is a national nonprofit environmental law firm which has made safeguarding the environment, including safeguarding human health and the environment from toxic chemicals, a key priority, and has developed expertise in this area. Earthjustice has filed or intervened in lawsuits involving the regulation of chemicals, including, for example, helping to defend the listing of styrene in the 12th Report on Carcinogens in *Styrene Information and Research Center, Inc. v. Sebelius*, 944 F. Supp.2d 71 (D.D.C. 2013). And it has submitted comments related to a wide variety of rules proposed under TSCA. In addition to being able to analyze the information provided pursuant to this FOIA request, Earthjustice has the "ability and intention to convey this information to the public." 40 C.F.R. § 2.107(l)(2)(iii). Earthjustice can review the information it receives, analyze it, and either write an entry for the Earthjustice blog (which receives approximately 35,000 page views per month) or write an article for publication in the Earthjustice monthly electronic magazine (which has a circulation of approximately 70,000 people).

SCHF is a coalition of national, state and local organizations committed to assuring the safety of chemicals used in our homes, workplaces and in the many products to which our families and children are exposed each day. SCHF and its partners took a leadership role during the LCSA legislative process, advocating the most protective legislation possible to reduce the risks of toxic chemicals in use today. SCHF has commented extensively on all aspects of EPA's implementation of LCSA, regularly communicates its positions to the public and its partners and is in a position to analyze the information received in response to this request and convey it to its extensive network of affiliated organizations and the general public.

Both Earthjustice and SCHF intend to disseminate any newsworthy information in the released records and their analysis of such records to supporters, partners (in the case of SCHF) and to the broader public, through one or more of the many communications channels referenced above. Earthjustice and SCHF have a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### **4. *Significance of the contribution to public understanding***

The requested records are critical to understanding matters of considerable public interest and concern: EPA's implementation of the recently revised TSCA; the Deputy Assistant Administrator's role in implementing the law, a matter in which her prior employer and its member companies have a direct and substantial financial interest; and whether Deputy Assistant Administrator Beck has been effectively shielded from these cases pursuant to governing ethics regulations and her ethics commitments. The requested records will shed significant light on these issues.

#### **B. *Earthjustice and SCHF Satisfy the Second Fee Waiver Requirement***

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because neither Earthjustice nor SCHF have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). Earthjustice and SCHF are both not-for-profit organizations. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). Earthjustice and SCHF seek to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the subject of this request. As noted above, the subject of this request is a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the underlying subject matter.

### III. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the office address listed below. Please send them on a rolling basis; EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. See *generally* 40 C.F.R. § 2.104 (describing response deadlines).

If EPA concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Eve C. Gartner". The signature is fluid and cursive, with the first name "Eve" and last name "Gartner" clearly legible.

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